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16 **Admitted pro hac vice*

17 Attorneys for Plaintiffs

18 **LISSETTE WAUGH AND WENDY ROBIN**

19 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

20
21 LISSETTE WAUGH AND WENDY ROBIN,) Civil Action No. 2:12-cv-1039
Plaintiffs,)
vs.)
23)
24 NEVADA STATE BOARD OF COSMETOLOGY,) **JOINT [PROPOSED]**
Defendant.) **PROTECTIVE ORDER**

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Protective Order

Upon the consent of counsel for both Plaintiffs and Defendant in the above-captioned matter, and for good cause shown, their Joint Motion for Protective Order is GRANTED.

5 It THEREFORE ORDERED, pursuant to Fed. R. Civ. P. 26(c), that the Confidential
6 Information, as defined below, produced in this case by Plaintiffs Lissette Waugh and
7 Wendy Robin and by the Defendant Nevada State Board of Cosmetology (hereafter the
8 "Parties") shall be kept confidential and filed only under seal, absent consent from the
9 disclosing party to file that information in open court. Good cause is shown for this Order
10 because the Confidential Information may contain trade secrets, confidential commercial,
11 and/or propriety information that would unduly prejudice the Parties if disclosed to any
12 person not authorized by this Order to receive such Confidential Information.

It is FURTHER ORDERED that:

Definitions of “Confidential Information” Subject To This Order

1. As applied to Plaintiffs, and for purposes of this Order only, the term “Confidential Information” shall mean any instructional materials, student handouts, lecture notes, lecture summaries, and/or mid-course or final examinations.

2. As applied to Defendant, and for purposes of this Order only, the term “Confidential Information” shall mean any written examination, whether authored by Defendant or obtained from a private third-party, to test applicants for any license issued by Defendant, including renewal exams, and any accompanying documents including, without limitation, any and all explanations, questions, alternative questions, parts, subparts, and answer keys.

Designation of Confidential Information

3. Confidential Information shall be produced separate from other materials and labeled "Confidential."

4. Where practical, the Producing Party shall designate Confidential Information in document form by stamping or otherwise marking every page of the document "Confidential" or some similar language. Other forms of Confidential Information shall be

1 so marked in any other reasonable manner appropriate to the form in which the Confidential
2 Information is produced.

3 5. Confidential Information shall not be disclosed, copied, or otherwise disseminated
4 except as provided in this Order.

5 6. If a Party initially produces Confidential Information for inspection, no marking
6 need be made by the Producing Party in advance of the inspection. After documents are
7 selected for copying, the Producing Party may appropriately mark the copies of the selected
8 documents as confidential before such copies are produced.

9 7. Counsel may designate information disclosed during a deposition as "Confidential
10 Information" by stating on the record before the conclusion of the deposition that the
11 deposition contains Confidential Information. Within 30 (thirty) days after the completion
12 of the transcript of such deposition (as certified by the court reporter), Counsel for the
13 Producing Party shall designate portions of the transcript as "Confidential" in a written
14 notification served on opposing counsel. Written notification of information designated as
15 Confidential Information shall identify the specific pages and lines of the transcript that
16 contain the Confidential Information. Counsel for each party shall attach a copy of such
17 notification to the face of the transcript and to each copy of the transcript. In addition, the
18 portion of the deposition transcript containing Confidential Information shall be stamped
19 with the appropriate designation.

20 8. In all other cases, designation of Confidential Information shall be made at the time
21 of production.

22 9. Should any Party to whom Confidential Information is disclosed object to the
23 designation of such information as Confidential Information, that Party shall notify the
24 Producing Party making the designation, in writing, and request that the Party re-classify
25 the document, information, or testimony. If such re-classification is not forthcoming within
26 ten (10) days, the objecting Party may apply to the Court. Until the Court rules to the
27 contrary, all materials designated "Confidential" shall be treated as such as described in this
28 Order.

1 **Persons Authorized To Receive Confidential Information**

2 10. Confidential Information may be disclosed under seal to the Court and court
3 personnel in this action, to court reporters, and to the attorneys of record in the above
4 captioned proceeding and their paralegals and/or assistants.

5 11. Confidential Information may also be disclosed to a third-party consultant or
6 independent expert retained in connection with this action, but Confidential Information
7 shall not be duplicated by such persons or used for any other purpose outside this litigation.

8 12. No person shall attend portions of depositions at which Confidential Information is
9 disclosed unless such person is an authorized recipient of Confidential Information under
10 the terms of this Order. If, during the course of a deposition, the response to a question
11 would require the disclosure of Confidential Information, the witness may refuse to answer
12 or counsel for the Party whose Confidential Information would be disclosed may instruct
13 the witness not to answer, or not to complete the answer, as the case may be, until any
14 persons not authorized to receive such information have left the room.

15 13. No Confidential Information will be disclosed to Plaintiffs or to any member of the
16 Nevada Board of Cosmetology.

17 14. Nothing in this Order shall prohibit counsel from disclosing a document containing
18 Confidential Information to the person the document identifies as an author or recipient of
19 such document, or to any person (including third-party witnesses) for which prior written
20 approval for disclosure has been granted by the Producing Party.

21 15. A Party's use for any purpose of its own documents, which that Party produces in
22 this action, shall not be considered a violation of this Order.

23 **Permissible Uses of Confidential Information**

24 16. All Confidential Information produced by, or discovery responses of, any Producing
25 Party in these proceedings, as well as all deposition testimony in these proceedings, that are
26 designated as "Confidential" shall be used only for purposes of this litigation and not for
27 any other purpose.

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1 17. If counsel wishes to disclose Confidential Information to any person not described
2 in Paragraph 10 above, counsel shall request approval for that disclosure in writing from the
3 Producing Party's counsel. If counsel objects to that disclosure, then no such disclosure
4 shall be made unless ordered by the Court.

5 18. Counsel shall retain no copies of Confidential Information, in electronic or any
6 other format, after this litigation is completely resolved.

7 19. Upon final termination of this action, including any and all appeals, counsel of
8 record shall return to the Producing Party all Confidential Information within thirty (30)
9 days of receiving written notice of final termination of this lawsuit.

10 20. The termination of proceedings in this action shall not, however, relieve counsel
11 from the obligation of maintaining any confidentiality mandated or required under this
12 Order.

13 **Manner of Filing**

14 21. Any Confidential Information subject to this Order that is filed with the Court shall
15 be filed in accordance with local rules and ECF filing procedures governing the filing of
16 documents under seal.

17 22. If any Confidential Information subject to this Order is made part of any other
18 document filed with the Court, two copies of that document will be filed: a full copy filed
19 under seal and a separate copy in which the information subject to this Order has been
20 redacted.

21 23. If any Confidential Information subject to this agreement is used in a deposition or
22 made an exhibit to a deposition, then the Confidential Information subject to this agreement
23 shall be segregated and placed in a sealed envelope marked "Confidential" and not opened
24 or disclosed to other individuals unless ordered by the Court or by agreement of the
25 undersigned counsel.

26 **Rights Reserved**

27 24. Any Party may apply to the Court for a further protective order relating to any other
28 material or information for use at trial or relating to any discovery in this litigation.

25. Any Party may object to the production of documents it considers not subject to discovery.

26. Any Party may apply to the Court for an order compelling production of documents or modification of this Order or for any order permitting disclosure of Confidential Information material beyond the terms of this Order.

27. Notwithstanding anything to the contrary that may be set forth herein, the parties understand that the Court shall retain the authority to modify this Order upon good cause shown.

28. Appropriate sanctions may be sought for any violation of this Order.

29. This Order shall take effect immediately.

IT IS SO ORDERED.

George Foley Jr.
GEORGE FOLEY, JR.
United States Magistrate Judge

DATED: September 17, 2012

HAVING SEEN AND AGREED:

DATED this 14th day of September 2012. DATED this 14th day of September 2012.

INSTITUTE FOR JUSTICE

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Attorneys for Plaintiffs
Lissette Waugh and Wendy Robin